



STATE OF NEW YORK
DEPARTMENT OF HEALTH
P.O. Box 11729
Albany, NY 12211

Notice of Decision

Decision Date: January 14, 2016

NY State of Health Number: [REDACTED]
Appeal Identification Number: AP000000004516



Dear [REDACTED],

On November 30, 2015, you appeared by telephone at a hearing on your appeal of NY State of Health Marketplace's July 19, 2015 eligibility determination and subsequent denial of a special enrollment period.

The enclosed Decision, rendered after that hearing, is issued by the Appeals Unit of NY State of Health.

If you have questions about your Decision, you can contact us by:

- Calling the Customer Service Center at 1-855-355-5777
- Sending Mail to:
NY State of Health Appeals
P.O. Box 11729
Albany, NY 12211
- Sending a Fax to 1-855-900-5557

When contacting NY State of Health about your appeal and/or the Decision, please refer to the Appeal Identification Number at the top of this notice.

Legal Authority

We are sending you this notice in accordance with Code of Federal Regulation 45 CFR § 155.545(b).

If you need this information in a language other than English or you need assistance reading this notice, we can help you. Call 1-855-355-5777 (TTY - English: 1-800-662-1220) (TTY - Spanish: 1-877-662-4886).

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Issues

The issues presented for review by the Appeals Unit of NY State of Health are:

Did the Marketplace properly determine that you were no longer eligible to enroll in a qualified health plan, effective July 31, 2015?

Did the Marketplace properly determine that you were not eligible for a special enrollment period?

Procedural History

On December 14, 2014, the Marketplace issued a notice of eligibility determination stating that you were conditionally eligible to receive advance premium tax credits and cost-sharing reductions, effective January 1, 2015. The notice further requested that you provide documentation confirming your income and citizenship status before March 14, 2015.

Also on December 14, 2014 the Marketplace issued a notice confirming your enrollment in in your qualified health plan. That notice also contained a reminder that the Marketplace needs documentation to confirm your income and citizenship status by March 14, 2015 or your health insurance could be cancelled.

On July 19, 2015, the Marketplace issued a notice of eligibility redetermination stating that you were no longer eligible to enroll in health insurance through the Marketplace because you had not confirmed your citizenship status. Your eligibility for coverage ended effective July 31, 2015.

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Also on July 19, 2015, the Marketplace issued a notice stating that your enrollment in your qualified health plan was terminated effective July 31, 2015.

On August 28, 2015, you spoke with the Marketplace's Account Review Unit and appealed the July 19, 2015 determination insofar as you were not eligible to enroll in a qualified health plan.

On November 30, 2015, you had a telephone hearing with a Hearing Officer from the Marketplace's Appeals Unit. At that time, interpretation services were provided by Spanish Interpreter Number [REDACTED]. The record was developed during the hearing and left open for up to 15 days to provide you an opportunity to submit supporting evidence, including a copy of your certificate of naturalization.

On December 3, 2015, the Marketplace's Appeals Unit received your supporting evidence, which included a copy of your certificate of naturalization. This document was marked as Appellant's Exhibit 1 and incorporated into the record. The record was closed on December 3, 2015.

Findings of Fact

A review of the record support the following findings of fact:

- 1) Your Marketplace account lists your preferred language for written communications as Spanish.
- 2) Your Marketplace account indicates that you receive notices from the Marketplace via regular mail.
- 3) You testified that you received the Marketplace's December 14, 2014 notice requesting documentation confirming your citizenship, but could not read it because it was in English.
- 4) The record reflects that the December 14, 2014 enrollment confirmation notice was sent to you in both English and Spanish. According to the December 14, 2014 enrollment confirmation notice sent to you in Spanish, you were requested to submit documentation confirming your income and your citizenship status before March 14, 2015.
- 5) No notices sent to you at the address listed in your Marketplace account have been returned as undeliverable.

- 6) You submitted a copy of your certificate of naturalization via facsimile to the Appeals Unit on December 3, 2015.
- 7) You are seeking reinstatement of your health insurance coverage.
- 8) According to the record, when you filed an appeal you requested a special enrollment period be granted.
- 9) According to the Appeal Summary in the Evidence Packet that is put together by the Marketplace, you do not meet the criteria for a special enrollment period.

Conflicting evidence, if any, was considered and found to be less credible than the evidence noted above.

Applicable Law and Regulations

Citizenship and Immigration Status

To enroll in a qualified health plan through the Marketplace, an applicant must be a citizen or national of the United States, or a non-citizen lawfully present in the United States and reasonably expects to become a citizen or remain a lawfully present noncitizen for the entire period for which enrollment is being sought (45 CFR § 155.305(a)(1)).

The Marketplace must verify or obtain information in order to determine that an applicant is eligible for enrollment in a qualified health plan, including the certification of citizenship, status as a national, or lawful presence (45 CFR § 155.315(a), (c)).

If an applicant attests to citizenship, status as a national, or lawful presence, and the Marketplace is unable to verify such attestation, the Marketplace must provide the applicant 90 days to provide satisfactory documentary evidence, from the date the notice of inconsistency is received by the applicant. Notice is considered received 5 days after the date on the notice, unless the applicant demonstrates that he or she did not receive the notice within the 5 day period. (45 CFR § 155.315(c)(3)).

Special Enrollment Period

The Marketplace must provide annual open enrollment periods during which time qualified individuals may enroll in a qualified health plan (QHP) and enrollees may change QHPs (45 CFR §155.410(a)).

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For the benefit year beginning on January 1, 2015, the annual open enrollment period began on November 15, 2014 and extended through February 15, 2015 (45 CFR §155.410(e)); however, the open enrollment period was further extended to February 28, 2015 for individuals who took steps to apply for coverage on or before the February 15, 2015 deadline, but were unable to complete the enrollment process (Press Release: NY State of Health Implements 'Waiting in Line' Provision Ahead of February 15 Open Enrollment Deadline, <http://info.nystateofhealth.ny.gov/news/press-release-ny-state-health-implements-%E2%80%98waiting-in-line%E2%80%99-provision-ahead-february-15-open>).

After each open enrollment period ends, the Marketplace provides special enrollment periods to qualified individuals. During a special enrollment period, a qualified individual may enroll in a QHP, and an enrollee may change their enrollment to another plan. This is permitted when one of the following triggering events occur:

- (1) The qualified individual or his or her dependent loses certain health insurance coverage:
 - (a) Health insurance considered to be minimum essential coverage;
 - (b) Enrolled in any non-calendar year health insurance policy that will expire in 2014, even if they have the option to renew the expiring non-calendar year individual health insurance policy; or
 - (c) Pregnancy-related coverage; or
 - (d) Medically needy coverage.
- (2) The qualified individual gains a dependent or becomes a dependent through marriage, birth, adoption, placement for adoption, or placement in foster care; or
- (3) The qualified individual or his or her dependent, who was not previously a citizen, national, or lawfully present individual gains such status; or
- (4) The qualified individual's or his or her dependent's, enrollment or non-enrollment in a QHP is unintentional, inadvertent, or erroneous and is the result of the error, misrepresentation, or inaction of an officer, employee, or agent of the Exchange or HHS, or its instrumentalities as evaluated and determined by the Exchange; or

- (5) The enrollee or dependent adequately demonstrates to the Exchange that the QHP in which he or she is enrolled substantially violated a material provision of its contract in relation to the enrollee; or
- (6) The enrollee or enrollee's dependent is newly eligible or ineligible for advance payments of the premium tax credit, or change in eligibility for cost-sharing reductions; or
- (7) The qualified individual, enrollee, or their dependent, gains access to new QHPs as a result of a permanent move; or
- (8) The qualified individual who is an Indian may enroll in a QHP or change from one QHP to another one time per month; or
- (9) The qualified individual or enrollee, or their dependent, demonstrates to the Exchange, in accordance with guidelines issued by HHS, that the individual meets other exceptional circumstances as the Exchange may provide; or
- (10) A qualified individual or enrollee, or his or her dependents, was not enrolled in QHP coverage or is eligible for but is not receiving advance payments of the premium tax credit or cost-sharing reductions as a result of misconduct on the part of a non-Exchange entity providing enrollment assistance or conducting enrollment activities

(45 CFR § 155.420(d)).

Legal Analysis

The first issue under review is whether the Marketplace properly determined that you were no longer eligible to enroll in a qualified health plan through the Marketplace, effective July 31, 2015.

The Marketplace is required to determine whether individuals are eligible to enroll in coverage through the Marketplace, and must confirm, among other things, that their citizenship status is satisfactory.

If the Marketplace cannot verify an individual's citizenship status, it must provide the individual a period of 90 days from the date notice is received to resolve the inconsistency. For purposes of verifying citizenship, notice is considered received 5 days after the date on the notice.

In the eligibility determination and enrollment confirmation notices issued on December 14, 2014, you were advised that your eligibility was only conditional,

and that you needed to confirm your income and citizenship status before March 14, 2015.

The record reflects that the Marketplace did not receive the requested citizenship documentation before the deadline.

Therefore, the record reflects that the Marketplace properly notified you of an inconsistency in your account and that you did not submit the requested citizenship documentation before the deadline.

If the Marketplace remains unable to verify the inconsistency after the 90 day period ends, then it must determine the applicant's eligibility based on the information available in the data sources.

Since the requested citizenship documentation was not received within the 90 day period, the Marketplace was required to redetermine your eligibility without verification of your citizenship status. As a result, the Marketplace properly determined that you could not enroll in a qualified health plan through NY State of Health effective July 31, 2015 because you did not provide the information requested by the Marketplace.

Therefore, the Marketplace's July 19, 2015 eligibility determination is correct and is AFFIRMED.

The second issue under review is whether the Marketplace properly determined that you did not qualify for a special enrollment period.

According to the record, when you filed an appeal you requested a special enrollment period be granted.

The record does not contain a notice of eligibility determination or redetermination on the issue of the special enrollment period. It does contain an Evidence Packet in which the Marketplace states that you do not meet the criteria for a special enrollment period.

Here, the lack of a notice of eligibility determination on the issue of special enrollment periods does not prevent the Appeals Unit from reaching the merits of the case or constitute material error. Under 45 CFR § 155.505(b), you are as entitled to appeal Marketplace failure to timely issue a notice of eligibility determination as you are to appeal an adverse notice of eligibility determination. The text of the Appeals Summary in the Evidence packet, permits an inference that the Marketplace did deny your special enrollment period request.

Since Appeal Unit review of Marketplace determinations is performed on a de novo basis, no deference would have been granted to a notice of denial of a

special enrollment period had it been issued. Therefore, currently at issue is whether you were properly denied a special enrollment period.

The Marketplace provided an open enrollment from November 15, 2014 until February 15, 2015, and later extended the open enrollment period to February 28, 2015 for people who could not complete their application by the February 15, 2015 deadline. Once the annual open enrollment period ends, a health plan enrollee must qualify for a special enrollment period in order to enroll in, or change to another health plan offered in the Marketplace.

Generally, the loss of health insurance coverage is considered a triggering event. Here, your enrollment was terminated effective July 31, 2015 because you failed to confirm your citizenship status within the required timeframe. The Marketplace considers your failure to provide proof of citizenship as a voluntary action causing the termination of your coverage; therefore, you would not be entitled to a special enrollment period in which to enroll in new coverage on this basis.

The credible evidence of record indicates that, since the open enrollment period closed on February 28, 2015, no other triggering events have occurred that would qualify you for a special enrollment period.

Therefore, the Marketplace properly denied your request for a special enrollment period.

Please note that this decision only applies to your eligibility for health insurance coverage for 2015. Since you provided documentation of your citizenship status, your case is RETURNED to the Marketplace to verify your documentation and to evaluate your eligibility for health insurance for 2016.

Decision

The July 19, 2015 eligibility determination notice is AFFIRMED.

You were not eligible for a special enrollment period.

Your case is RETURNED to the Marketplace to verify the citizenship documentation you provided after the hearing and to evaluate your eligibility for health insurance for 2016.

Effective Date of this Decision: January 14, 2016

How this Decision Affects Your Eligibility

If you need this information in a language other than English or you need assistance reading this notice, we can help you. Call 1-855-355-5777 (TTY - English: 1-800-662-1220) (TTY – Spanish: 1-877-662-4886).

The Marketplace properly determined that you were not eligible to remain enrolled in your health plan as of July 31, 2015.

The Marketplace properly determined that you were not eligible for a special enrollment period to reenroll into your health plan for 2015.

Your case is being sent back to the Marketplace to verify the citizenship documentation you submitted and redetermine your eligibility for health insurance for 2016, if necessary.

If You Disagree with this Decision (Appeal Rights)

This Decision is final unless you submit an appeal request to U.S. Department of Health and Human Services or bring a lawsuit under New York Civil Practice Law and Rules, Article 78.

You may bring a lawsuit on any Appeals Unit decision in New York State court in accordance with Article 78 of the New York Civil Practice Law and Rules. This must be done within four months after the date of the Decision Date, which appears on the first page of this Decision.

Additionally, Appeals Unit decisions on issues involving eligibility for qualified health plans, advance premium tax credits, and cost-sharing reductions may be appealed to the U.S. Department of Health and Human Services. This must be done within 30 days of the date of the Decision Date, which appears on the first page of this Decision (45 CFR § 155.520(c)).

If you wish to be represented by an attorney in bringing an outside appeal and do not know how to go about getting one, you may contact legal resources available to you. You may, for example, contact the local County Bar Association, Legal Aid, or Legal Services.

If You Have Questions about this Decision (Customer Service Resources):

You can contact us in any of the following ways:

- By calling the Customer Service Center at 1-855-355-5777
- By mail at:
NY State of Health Appeals
P.O. Box 11729
Albany, NY 12211
- By fax: 1-855-900-5557

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Summary

The July 19, 2015 eligibility determination notice is AFFIRMED.

The Marketplace properly determined that you were not eligible to remain enrolled in your health plan as of July 31, 2015.

The Marketplace properly determined that you were not eligible for a special enrollment period to reenroll into your health plan for 2015.

Your case is being sent back to the Marketplace to verify the citizenship documentation you submitted and redetermine your eligibility for health insurance for 2016, if necessary.

Legal Authority

We are sending you this notice in accordance with Code of Federal Regulation 45 CFR § 155.545(a).

A Copy of this Decision Has Been Provided To:

